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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of

Amendment of Part 61 of the
the Commission's Rules to
Require Quality of Service
Standards in Local Exchange
Carrier Tariffs

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)
) AAD 92-39
) RM-7967
)
)
)

COMMENTS

BellSouth Corporation, on behalf of its telephone operating company BellSouth Telecommunications, Inc. ("BellSouth"), hereby opposes the Petition for Rulemaking ("Petition") filed April 7, 1992, by International Communications Association ("ICA") and Consumer Federation of America ("CFA") (collectively "Petitioners").

Petitioners ask the Commission to initiate a proceeding to require local exchange carriers (LECs) to include certain of their internal service quality standards in their interstate tariffs. The requirement proposed by Petitioners has only recently been addressed and rejected by the Common Carrier Bureau (Bureau) and is currently before the Commission on review. A separate proceeding would merely be duplicative. Accordingly, the Petition should be dismissed.

Petitioners concede at the outset that the issue raised in the Petition constitutes nothing more than a "subset" of issues addressed by both the Commission and the Bureau in

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the LEC Price Caps proceeding.¹ Petitioners' claim that "fundamentally changed circumstances" justify revisiting this issue in a new proceeding cannot be substantiated, particularly while the precise issue is still before the Commission in an Application for Review to which Petitioners were party. Petitioners' apparent strategy of filing concurrent requests for the same regulatory action through separate procedural devices should not be countenanced.

In the LEC Price Cap Reconsideration Order,² the Commission directed the Bureau to consider whether the inclusion in LEC tariffs of LECs' own service quality standards should be made part of the Commission's extensive service quality assurance program for price cap LECs.³ Following public notice,⁴ and upon an extensive record that included Petitioner ICA's contribution and incorporated pleadings from the LEC Price Cap Reconsideration proceeding (again including Petitioner ICA's contributions),⁵ the

¹ Petition at 2.

² Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637 (1991) ("LEC Price Cap Reconsideration Order").

³ Id. at paras. 191-92 and n. 268.

⁴ Public Notice, 6 FCC Rcd 1621 (Com. Car. Bur. March 8, 1991).

⁵ While having participated in earlier stages of the LEC Price Cap proceeding, Petitioner CFA inexplicably chose not to comment on this issue on reconsideration or pursuant to the Bureau's notice, even though the issue had been specifically raised by others. Petitioner CFA's decision to
(continued...)

Bureau determined that any benefits that might arise from inclusion of LECs' internal service standards in their interstate tariffs were outweighed by potential administrative burdens on LECs and the Commission, particularly since the same benefits could be realized through other reporting and monitoring mechanisms already established.⁶ Hence, the Bureau declined to require LECs to include internal service standards in their interstate tariffs.

In an Application for Review of that decision, Petitioners and thirteen other joint applicants summarized the arguments that had been presented to and rejected by the Bureau:

First, it would enable users and the Commission to "benchmark" carriers, identifying any companies that have unreasonably low standards. Second, it would place the reported data in context, giving meaning to the current "pass/fail" reporting scheme. Third it would ensure that any reduction in the LECs' standards occurs only after public notice and a full justification by the carriers. Finally it would help users plan their networks by disseminating expected performance data.⁷

Further, in reply to comments on that Application, TCA, one of Petitioners' joint applicants, again summarized the

⁵(...continued)
remain silent at that time gives it no claim of right to raise the same issue in a petition for a new proceeding.

⁶ Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2974, 2992 (1991) ("Bureau Order").

⁷ Application for Review, CC Docket No. 87-313 (June 17, 1991) at 6, quoting Reply Comments of TCA, CC Docket No. 87-313 (April 25, 1991) at 3.

arguments the Bureau had rejected:

[T]ariffed disclosure is necessary to disseminate this vital information as widely as possible, permit benchmarking, facilitate users' network planning, and ensure adequate justification is given for any reduction in service levels.⁸

Now, without even waiting for the Commission to act on that Application,⁹ Petitioners are raising the same issue and making the same arguments in their petition for a new proceeding. Clearly, this strategy of pursuing the same issue through multiple procedural devices should be rejected as duplicative and wasteful of parties' and the Commission's resources.

While Petitioners may claim that they have raised new arguments to support their objectives, even a cursory review of the Petition shows that all Petitioners have done is change the relative emphasis they have accorded each of their old arguments. For example, the Petition stresses the utility that tariffed service quality information would provide users who would then be "able to purchase and utilize whatever means are available...to ensure that their communication requirements are met."¹⁰ In spite of the

⁸ TCA Reply comments, CC Docket 87-313 (filed July 17, 1991).

⁹ For reasons explained in BellSouth's Opposition to that Application, CC Docket No. 87-313 (filed July 2, 1991), the Application should be denied. Since the Petition raises no new issues or arguments beyond those addressed in the Application, the Petition should be denied on the same substantive grounds.

¹⁰ Petition at 10.

highlighted role this argument plays in the Petition, the argument itself is not different from the one previously advanced both to the Bureau and in the Application for Review that such information would "facilitate users' network planning."¹¹ That Petitioners chose to expound on this argument in the Petition moreso than in the Application is insufficient grounds for establishing a second proceeding for the Commission to consider it.

The sameness of arguments in the Petition and the existing price cap proceeding can be seen in other aspects of the Petition as well. For example, Petitioners reassert that

[t]ariffed quality of service standards will provide the Commission and users with an immediate benchmark against which to judge the LECs' performance under incentive regulation[;]¹²

such a requirement would be among the most effective and least intrusive means of ensuring that the incentives created by price cap regulation -- to reduce costs so as to increase earnings -- do not manifest themselves in a deterioration of service quality[;]¹³

[s]uch information would also apply pressure upon the LECs to explain differences between their

¹¹ See text at notes 5 and 6, supra.

¹² Petition at 18 (emphasizing this point in the concluding summary). See also Petition at n. 22 ("Information on service quality standards could serve not only as the Commission's starting point for tariff review purposes, but also as a means of "benchmarking" the resulting tariffs against one another.").

¹³ Id. at 5.

varying standards of quality[;]¹⁴ and

[i]t is . . . important that the Commission identify the particular categories of standards which should appear in LECs' tariff . . . [to] ensure that all of the LECs subject to price cap regulation include the same service quality standards in their tariffs.¹⁵

These are but a few examples of the redundancy of argument between the Petition and the price cap proceeding. Not only are these the precise arguments considered and rejected by the Bureau, but they are also the very same arguments raised in Petitioners' Application for Review.

Petitioners apparently recognized this deficiency in their pleading strategy and sought to justify their repetitious arguments by citing "fundamentally changed circumstances."¹⁶ Yet, the only changed circumstance cited by Petitioners is the submission of LECs' internal service quality objectives to the U.S. House of Representatives' Energy and Commerce Committee. Aside from the metaphysical assertion that this "new information...transcends the record before the Commission" in the price cap proceeding,¹⁷ Petitioners have made no attempt to explain how the report

¹⁴ Id. at 10. Were Petitioners only seeking by their Petition to obtain information upon which they could make purchase decisions or form performance expectations, as they seem to represent, comparative differences between LECs' quality standards would be irrelevant.

¹⁵ Id. at 11.

¹⁶ Petition at 2.

¹⁷ Petition at 2-3.

to Congress is relevant to the issue of whether LECs should provide quality service standards in their tariffs.

The benefits Petitioners claim will accrue from inclusion of internal standards in LECs' tariffs are not dependent on whether those standards have been disclosed previously. Either the benefits of tariffing standards will outweigh the administrative costs of doing so, or they will not. The Common Carrier Bureau has concluded they will not. Petitioners have yet to provide any cost/benefit analysis to support a contrary conclusion.¹⁸ The one time aggregation of information and submission of a report to Congress simply is not relevant to the ongoing balance of benefits and costs that would be associated with a tariffed standards requirement,¹⁹ and in no event is it of sufficient significance to warrant initiation of a new rulemaking proceeding.

To the extent Petitioners continue to assert that their objective is to obtain information useful to networking planning decisions, their concern is answered in their own Petition. Petitioners assert they are "simply requesting

¹⁸ See BellSouth Opposition to Application for Review, CC Docket No. 87-313 (filed July 2, 1991).

¹⁹ See Petition at 16-17, recognizing potential that Commission could be drawn into disputes over tariffed service standards. Given Petitioners' continuing insistence that tariffed standards provide an opportunity for benchmarking and other regulatory oversight, BellSouth submits that this potential is more than "small" or "slight". Petition at 17.

that the Commission require LECs to include in their tariffs internal performance standards which these carriers already utilize and which, for the most part, they have already disclosed."²⁰

Moreover, it is not as if LECs' tariffs are devoid of technical quality parameters or that service quality information is not available elsewhere. As Petitioners noted, the Commission has cited with approval LECs' practice of cross referencing in their tariffs technical publications that establish uniform definitions of service upon which comparisons can be made.²¹ BellSouth regularly responds to requests for such publications and has often provided them to customers BellSouth believes to be members of Petitioner ICA.

²⁰ Petition at 16 (emphasis in original).

²¹ Petition at n.6, citing Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6780, 6830 & n. 483 (1990) ("LEC Price Cap Order").

CONCLUSION

For the foregoing reasons, BellSouth respectfully asks the Commission to dismiss Petitioners' request for a redundant and needless regulatory proceeding.

Respectfully submitted,

BELLSOUTH CORPORATION on behalf of
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Date: June 22, 1992

CERTIFICATE OF SERVICE

I hereby certify that I have this 22th day of June, 1992, serviced all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

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